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EXAMINER

NGUYEN, DUSTIN

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* HIDETAKA ITO

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Appeal 2008-0578  
Application 10/038,655  
Technology Center 2400

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Decided: November 17, 2008

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Before JOSEPH L. DIXON, LANCE LEONARD BARRY, and  
HOWARD B. BLANKENSHIP, *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

A Patent Examiner rejected claims 1-18. The Appellant appeals therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

#### A. INVENTION

The invention at issue on appeal enables high-speed changeover of a permanent virtual circuit ("PVC") upon the occurrence of, or release from, trouble. (Spec. 3.)

#### B. ILLUSTRATIVE CLAIM

Claim 1, which further illustrates the invention, follows.

1. A PVC switching control method for controlling a PVC connection in a communication network, comprising:

    setting a plurality of PVC connections and individually corresponding controlling connections between two exchanges of the communication network;

    detecting, by each of the exchanges, occurrence of or release from trouble with a PVC connection through the corresponding controlling connection; and

    switching an operative PVC connection to another one of the PVC connections in response to a result of the detection.

#### C. REFERENCES

The Examiner relies on the following references as evidence:

Nagata	US 6,181,680 B1	Jan. 30, 2001
Heeren	US 6,311,288 B1	Oct. 30, 2001
Yamada	US 2003/0137933 A1	Jul. 24, 2003

#### D. REJECTIONS

The Examiner makes the following rejections.

Claims 1, 2, 4, 5, 7, 9-13, 15, 16, and 18, stand rejected under 35 U.S.C. § 102(e) as anticipated by Yamada.

Claims 3, 8, and 14, stand rejected under 35 U.S.C. § 103(a) as obvious over Yamada and Heeren.

Claims 6 and 17 stand rejected under 35 U.S.C. § 103(a) as obvious over Yamada and Nagata.

## II. ISSUE

"Rather than reiterate the positions of the parties *in toto*, we focus on an issue therebetween." *Ex parte Kuruoglu*, No. 2007-0666, 2007 WL 2745820, at \*2 (BPAI 2007). The Examiner makes the following findings.

Yamada discloses a control PVC [i.e. a dark double headed arrow] for detection of a failure on the line X is set up on the line X [Figure 1; and paragraph 0041, lines 15-17]. Also, Yamada shows each control PVC [i.e. a dark double headed arrow] for each connecting line of plurality of connecting lines [Figure 7; and paragraph 0056].

(Ans. 9-10.) The Appellant argues that neither in Figure 1 nor "Figure 7 does Yamada et al. disclose or suggest setting a plurality of PVC connections and individually corresponding controlling connections between two exchanges of a communication network . . . ." (Reply Br. 4.) Therefore, the issue is whether the Examiner has shown that Yamada sets a plurality of PVC connections between two exchanges of a communication network. and also sets controlling connections individually corresponding to the PVC connections between the two exchanges.

### III. PRINCIPLES OF LAW

"[A]n invention is anticipated if the same device, including all the claim limitations, is shown in a single prior art reference. Every element of the claimed invention must be literally present, arranged as in the claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed.Cir. 1989) (citing *Perkin-Elmer Corp. v. Computervision Corp.*, 732 F.2d 888, 894 (Fed. Cir. 1984); *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 771-72 (Fed. Cir. 1983)). "The Patent Office has the initial duty of supplying the factual basis for its rejection. It may not . . . resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis." *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967). "[A]bsence from the reference of any claimed element negates anticipation." *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571 (Fed. Cir. 1986).

### IV. FINDINGS OF FACT

"In FIG. 1 [of Yamada], a first exchange unit A is connected to a second exchange unit B via a line X and a line Y." (¶ 0041.) Furthermore, "[a] control PVC (Permanent Virtual Connection) for detection of a failure on the line X is set up on the line X." (*Id.*) The Examiner has not shown, however, that the reference sets up another control PVC for detection of a failure on line Y.

For its part, Yamada's "FIG. 7 is a diagram for explaining the operation performed when a connection on a line connecting between [sic] two exchange units (exchange unit A and exchange unit C) is switched over to a reserve connection passing through a third exchange unit (exchange

unit D)." (§ 0056.) The Figure uses a solid line to show a primary connection between exchange units A and C and a dashed line to shown a backup connection (Dd) between exchange units A and C.

Figure 7 also uses a single, dark, double-headed arrow to show what may be a control PVC between exchange units A and C. This control PVC corresponds to the aforementioned primary connection between exchange units A and C.

## V. ANALYSIS

Figure 7 does not show, however, a single PVC connection between exchange units A and C that corresponds to the aforementioned backup connection Dd between exchange units A and C. Instead, the Figure uses two, dark, double-headed arrows to show what may be one control PVC between exchange units A and D and another control PVC between exchange units D and C. We will not resort to speculation or unfounded assumptions that the two control PVCs actually pass completely through exchange unit D to form a single control PVC.

The absence of setting a plurality of PVC connections between two exchanges of a communication network and also setting controlling connections individually corresponding to the PVC connections between the two exchanges negates anticipation.

The Examiner does not allege, let alone show, that the addition of Heeren or Nagata cures the aforementioned deficiency of Yamada.

## VI. CONCLUSION

For the aforementioned reasons, the Examiner has not shown that Yamada sets a plurality of PVC connections between two exchanges of a communication network and also sets controlling connections individually corresponding to the PVC connections between the two exchanges.

## VII. ORDER

We reverse the anticipation rejection of claims 1, 2, 4, 5, 7, 9-13, 15, 16, and 18 and the obviousness rejections of claims 3, 6, 8, 14, and 17.

REVERSED

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